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Remarks

The Office Action mailed August 27, 2003 has been carefully reviewed and the following remarks are made in consequence thereof.

Claims 1-4, 6-7, and 10-30 are now pending in this application. Claims 1, 3, 6-7, 14-16, and 18 stand rejected. Claims 2, 4, 10-13, 17, and 19-29 have been withdrawn. Claims 5 and 8-9 have been canceled. Claim 30 is newly added. No fee is due for newly added Claim 30.

In accordance with 37 C.F.R. 1.136(a), a two-month extension of time is submitted herewith to extend the due date of the response to the Office Action dated August 27, 2003, for the above-identified patent application from November 27, 2003, through and including January 27, 2004. In accordance with 37 C.F.R. 1.17(a)(2), authorization to charge a deposit account in the amount of $420.00 to cover this extension of time request also is submitted herewith.

The rejection of Claims 1, 6, 7, 14, 16, and 18 under 35 U.S.C. § 102(e) as being anticipated by Schanin is respectfully traversed.

Schanin describes a refrigerator soda vending machine (AP1) that includes a thermo-sensor (T1) for monitoring temperature within a refrigerated chamber (30) and a sensor (OC) for monitoring occupancy in the vicinity of the chamber. A cooling system (40) is used to keep the chamber and its contents chilled and is controlled by a controller (60). The controller monitors input from the thermo-sensor and is pre-programmed with lower and upper threshold temperatures. The vending machine has an active mode and a power-conservation mode. A default program determines the mode based on occupancy as indicated by the occupancy sensor and chamber temperature as indicated by the thermo-sensor. The chamber is divided into a cool zone (CZ) and a warm zone (WZ), thereby stratifying chamber items.

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Applicant respectfully traverses the assertion in the Office Action dated February 20, 2002 rejection (maintained in the August 27, 2003) that "Schanin discloses a control scheme for a cooling device 13 in which the internal set point of 13 is raised by a human status presence detector oc when there is no sensed presence". Rather, it is respectfully submitted that there is only one upper threshold described by Schanin that is not adjusted. For example, at column 6 lines 1-12 it states "While vending machine AP1 is in power-conservation mode, sensors T1 and OC are still monitored at step S7. If the area remains vacant and the temperature indicated by thermo-sensor T1 remains below the upper threshold, power-conservation mode continues, as indicated by the return arrow to step S6. If the temperature indicated by thermo-sensor T1 goes above the upper threshold or if occupancy is detected by sensor OC, then normal operation is resumed, as indicated by the return arrow from step S7 to step S1." Additionally, at column 6, lines 45-45, Schanin describes that "Unless power-conservation mode is interrupted, the temperature sensed by thermo-sensor T1 will detect that the upper threshold is reached. This triggers cooling system 40 and fans F1 and F2. This causes the average chamber temperature to drop and the chamber temperature distribution to become uniform." Therefore, it is respectfully submitted that Schanin describes turning on cooling system 40 whenever the temperature raises above the upper threshold regardless of power-conversation mode or normal operation. And therefore, Schanin does not describe controlling a temperature controlled device at a first temperature and a second temperature. Rather, Schanin always controls the device using the upper threshold, and varies whether or not to allow stratification based on the occupancy sensor OC.

Claim 1 recites a method for operating a temperature controlled device, wherein the method includes the steps of "detecting a human presence status...controlling the temperature controlled device at a first temperature when the detected status is human present...and controlling the temperature controlled device at a second temperature when the detected status is human absent".

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Schanin does not describe nor suggest a method for operating a temperature controlled device, wherein the method includes the steps of detecting a human presence status, controlling the temperature controlled device at a first temperature when the detected status is human present, and controlling the temperature controlled device at a second temperature when the detected status is human absent. Moreover, Schanin does not describe or suggest a method including controlling the temperature controlled device at a second temperature when the detected status is human absent. Rather, Schanin describes turning on a cooling system whenever the temperature raises above the upper threshold regardless of occupancy status. For the reasons set forth above, Claim 1 is submitted to be patentable over Schanin.

Claims 6 and 7 depend from independent Claim 1. When the recitations of Claims 6 and 7 are considered in combination with the recitations of Claim 1, Applicant submits that dependent Claims 6 and 7 are likewise patentable over Schanin.

Claim 14 recites a method for fabricating a temperature controlled device, wherein the method includes "providing a human presence detector in an area distant to the temperature control device...and coupling the human presence detector to the temperature controlled device such that the temperature controlled device is controlled based on a human presence status such that the temperature controlled device is controlled at a first temperature when a detected status is human present and the temperature controlled device is controlled at a second temperature when the detected status is human absent".

Schanin does not describe or suggest a method for fabricating a temperature controlled device, wherein the method includes providing a human presence detector in an area distant to the temperature control device and coupling the human presence detector to the temperature controlled device such that the temperature controlled device is controlled based on a human presence status such that the temperature controlled device is controlled at a first temperature when a detected status is human present and the temperature controlled device is controlled at a second temperature when the detected status is human absent. Moreover, Schanin does not

describe or suggest a method for fabricating a temperature controlled device, wherein the method includes coupling the human presence detector to the temperature controlled device such that the temperature controlled device is controlled based on a human presence status such that the temperature controlled device is controlled at a first temperature when a detected status is human present and the temperature controlled device is controlled at a second temperature when the detected status is human absent. Rather, Schanin describes turning on a cooling system whenever the temperature raises above the upper threshold regardless of occupancy status. For the reasons set forth above, Claim 14 is submitted to be patentable over Schanin.

Claim 16 depends from independent Claim 14. When the recitations of Claim 16 are considered in combination with the recitations of Claim 14, Applicant submits that dependent Claim 16 likewise is patentable over Schanin.

Claim 18 recites a method for fabricating a control unit for a temperature controlled device, wherein the method includes the steps of "providing a control unit...and coupling a human detector to the control unit such that the control unit controls the temperature controlled device based on a human presence status such that the temperature controlled device is controlled based on a human presence status such that the temperature controlled device is controlled at a first temperature when a detected status is human present and the temperature controlled device is controlled at a second temperature when the detected status is human absent".

Schanin does not describe or suggest a method for fabricating a control unit for a temperature controlled device, wherein the method includes the steps of providing a control unit and coupling a human detector in an area distant to the control unit such that the temperature controlled device is controlled based on a human presence status such that the temperature controlled device is controlled at a first temperature when a detected status is human present and the temperature controlled device is controlled at a second temperature when the detected status is human absent. Moreover, Schanin does not describe or suggest a method including coupling a

human detector to the control unit such that the control unit controls the temperature controlled device based on a human presence status such that the temperature controlled device is controlled based on a human presence status such that the temperature controlled device is controlled at a first temperature when a detected status is human present and the temperature controlled device is controlled at a second temperature when the detected status is human absent. Rather, Schanin describes turning on a cooling system whenever the temperature raises above the upper threshold regardless of occupancy status. For the reasons set forth above, Claim 18 is submitted to be patentable over Schanin.

For the reasons set forth above, Applicant respectfully requests that the Section 102 rejection of Claims 1, 6, 7, 14, 16, and 18 be withdrawn.

The rejection of Claims 3, 5, and 15 under 35 U.S.C. § 103(a) as being unpatentable over Schanin in view of Carrell et al. ("Carrell") or Cross is respectfully traversed. Claim 5 has been canceled.

Schanin is described above. Carrell describes a room temperature control system that includes a transmitter-receiver unit for producing an acoustic standing wave pattern in a room. The unit also produces a signal when a motion in the room disturbs the pattern.

Cross describes an apparatus for activating climate control systems in response to the entry or absence of persons in a dwelling. The sensor is either a motion or thermal energy detection unit which emits a signal in response to the presence of person(s) within a room.

Applicant respectfully submits that the Section 103 rejection of the presently pending claims is not a proper rejection. Obviousness cannot be established by merely suggesting that it would have been an obvious to one of ordinary skill in the art to modify Schanin according to the teachings of Carrell or Cross. More specifically, it is respectfully submitted that a prima facie case of obviousness has not been established. As explained by the Federal Circuit, "to establish obviousness based on a combination of the elements disclosed in the prior art, there must be

some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant." *In re Kotzab*, 54 USPQ2d 1308, 1316 (Fed. Cir. 2000). MPEP 2143.01.

Moreover, the Federal Circuit has determined that:

> [I]t is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention."

In re Fitch, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992). Further, under Section 103, "it is impermissible . . . to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." *In re Wesslau*, 147 USPQ 391, 393 (CCPA 1965). Rather, there must be some suggestion, outside of Applicant's disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicant's disclosure. *In re Vaeck*, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991).

In the present case, neither a suggestion nor motivation to combine the cited art, or any reasonable expectation of success has been shown. Accordingly, since there is no teaching nor suggestion in the cited art for the claimed combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for this reason alone, Applicant requests that the Section 103 rejection of Claims 3 and 15 be withdrawn.

Furthermore, Applicant respectfully submits that no motivation for the combination can be found within Schanin, Carrell, and Cross, as Schanin, Carrell, and Cross teach away from each other. Schanin describes turning on a cooling system whenever the temperature raises

above the upper threshold regardless of occupancy status, wherein an occupancy sensor is located on the device. In contrast to Schanin, Carrell describes a room temperature control system that includes a motion detector in an area distant to the room temperature control system. Also in contrast to Schanin, Cross teaches an apparatus for activating climate control systems in response to the entry or absence of persons in a dwelling.

If art "teaches away" from a claimed invention, such a teaching supports the nonobviousness of the invention. *U.S. v. Adams*, 148 USPQ 479 (1966); *Gillette Co. v. S.C. Johnson & Son, Inc.*, 16 USPQ2d 1923, 1927 (Fed. Cir. 1990). In light of this standard, it is respectfully submitted that the cited art, as a whole, is not suggestive of the presently claimed invention. More specifically, because Applicant respectfully submits that Schanin teaches away from Carrell and Cross, and as such, there is no suggestion or motivation to combine Carrell or Cross with Schanin.

Further, and to the extent understood, no combination of Schanin, Carrell, and Cross describes or suggests the claimed combination, and as such, the presently pending claims are patentably distinguishable from the cited combination. Specifically, Claim 3 depends from Claim 1 recites a method for operating a temperature controlled device, wherein the method includes the steps of "detecting a human presence status...controlling the temperature controlled device at a first temperature when the detected status is human present...and controlling the temperature controlled device at a second temperature when the detected status is human absent".

None of Schanin, Carrell, and Cross, alone or in combination, describe or suggest a method for operating a temperature controlled device, wherein the method includes the steps of detecting a human presence status, controlling the temperature controlled device at a first temperature when the detected status is human present, and controlling the temperature controlled device at a second temperature when the detected status is human absent. Rather, Schanin describes turning on a cooling system whenever the temperature raises above the upper

threshold regardless of occupancy status, Carrell describes a room temperature control system that includes a transmitter-receiver unit for producing an acoustic standing wave pattern in a room, and Cross describes an apparatus for activating climate control systems in response to the entry or absence of persons in a dwelling. Accordingly, for at least the reasons set forth above, Claim 1 is submitted to be patentable over Schanin in view of Carrell or Cross.

Claim 3 depends from independent Claim 1. When the recitations of Claim 3 are considered in combination with the recitations of Claim 1, Applicant submits that dependent Claim 3 likewise is patentable over Schanin in view of Carrell or Cross.

Claim 15 depends from Claim 14 which recites a method for fabricating a temperature controlled device, wherein the method includes "providing a human presence detector in an area distant to the temperature control device...and coupling the human presence detector to the temperature controlled device such that the temperature controlled device is controlled based on a human presence status such that the temperature controlled device is controlled at a first temperature when a detected status is human present and the temperature controlled device is controlled at a second temperature when the detected status is human absent".

None of Schanin, Carrell, and Cross, alone or in combination, describe or suggest a method for fabricating a temperature controlled device, wherein the method includes providing a human presence detector in an area distant to the temperature control device and coupling the human presence detector to the temperature controlled device such that the temperature controlled device is controlled based on a human presence status such that the temperature controlled device is controlled at a first temperature when a detected status is human present and the temperature controlled device is controlled at a second temperature when the detected status is human absent. Rather, Schanin describes turning on a cooling system whenever the temperature raises above the upper threshold regardless of occupancy status, Carrell describes a room temperature control system that includes a transmitter-receiver unit for producing an acoustic standing wave pattern in a room, and Cross describes an apparatus for activating climate

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control systems in response to the entry or absence of persons in a dwelling. Accordingly, for at least the reasons set forth above, Claim 14 is submitted to be patentable over Schanin in view of Carrell or Cross.

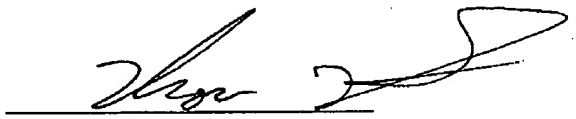
Claim 15 depends from independent Claim 14. When the recitations of Claim 15 are considered in combination with the recitations of Claim 14, Applicant submits that dependent Claim 15 is likewise patentable over Schanin in view of Carrell or Cross. Claim 5 has been canceled.

For the reasons set forth above, Applicant respectfully requests that the Section 103 rejection of Claims 3, 5, and 15 be withdrawn.

Newly added Claim 30 depends from Claim 1 which is submitted to be patentable over the cited art. When the recitations of Claim 30 are considered in combination with the recitations of Claim 1, Applicant submits that dependent Claim 30 is likewise patentable over the cited art.

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,



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